

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2139 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRAKUMAR P PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondent Nos. 1, 2 & 3

MR SUNIL C PATEL with MR RC JANI for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/06/97

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 15/2/1997.

2. The District Magistrate, Kheda, with a view to preventing the petitioner from acting in any manner

prejudicial to the maintenance of supply of essential commodities, found it necessary to detain him and consequently, the authority passed the impugned order in exercise of his powers as conferred by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the P.B.M. Act, 1980).

3. The respondents nos. 1 and 4 have filed their respective affidavits-in-reply in answer to rule having been issued.

4. The grounds of detention inter-alia indicate that the petitioner has been holding retail licence bearing no. 542/86 and authorisation bearing no. 334/85 for running a fair price shop and authorisation bearing no. 391/85 for dealing with levy sugar. It has been asserted that the petitioner has been looking after the business of the fair price shop as appearing in his statement recorded by the Supply Inspector of Kheda on 23-24/1/1997. In the inspection carried out by the said Supply Inspector following irregularities came to be noticed :-

- (i) Sale register of essential articles was not maintained.
- (ii) Stock register for the commodities levy sugar, wheat and rice for relief, wheat and rice for public distribution has not been maintained since October 1996 till the date of the inspection.
- (iii) Stock register for blue colour kerosene has not been maintained since November 1996 till the date of inspection.
- (iv) When the ration card holders come to the Government approved fair price shops for purchase of essential articles, stock of essential articles is to be given after preparing sale bill for respective commodity and making necessary entry in the stock register. However, at the time of inspection concerning following commodities for the period shown against such commodities, sale bills have not been issued and such fact has been reflected from the statement of the petitioner recorded on 23/1/1997 :-

Essential Article Period

- (1) Kerosene Nov'96 to Dec'96
- (2) Wheat,Rice (relief) Dec'96 to Jan'97
- (3) Wheat,Rice (PDS) Dec'96 to Jan'97
- (4) Levy sugar Jan'97.

It has accordingly been alleged that the stock of essential articles has been disposed of without issuing sale bills.

(v) After verification of the sale bills issued between October 1996 and January 1997 (the date of inspection) and the record produced, it was revealed that the stock of essential articles shown below has been disposed of for personal gain without issuing sale bills:-

Levy sugar 3690 Kgs.
Wheat (PDS) 625 Kgs.
Wheat (Relief) 1555 Kgs.
Rice (PDS) 100 Kgs.
Rice (Relief) -
Kerosene 2000 Litres.

5. It has accordingly been asserted that the aforesaid stock of essential articles has been disposed of unauthorisedly without issuing sale bills and without distributing the same to the card holders. Breach of the relevant provisions of the PBM Act has been alleged to have been committed by the petitioner under the aforesaid circumstances.

6. The aforesaid order of detention has been challenged on number of grounds set out in the petition. One of the grounds which has been canvassed relates to the non-supply of documents as particularised in ground (W) appearing at page 25 (8) and ground no. (AA) appearing at page 20 (B). Upon verification of the papers by the learned AGP it could be noticed that the licence which would disclose the conditions for holding the licence has been relied upon by the detaining authority, but the copy thereof has not been supplied to the petitioner. It has, therefore, been submitted that there is non-communication of the grounds of detention and, therefore, non-compliance of Article 22(5) of the Constitution of India. Learned counsel appearing for the respondents have verified from the records supplied to the petitioner and have fairly submitted that the copy of the licence has not been supplied to the petitioner.

7. In the background of the aforesaid facts it does appear that mandate of Article 22(5) of the Constitution of India cannot be said to have been complied with. That would lead to the conclusion that the petitioner has been deprived of his right to make effective and adequate representation against the impugned order of detention. This ground alone would be sufficient to vitiate the

impugned order of detention. This conclusion would stand fortified by the decisions in the case of Budhabhai Somabhai Parmar v. District Magistrate, Kheda reported in 30 (1) GLR 325 and Kiritkumar v. Union of India reported in AIR 1981 SC 1621.

8. In view of what is stated above, the impugned order of detention is quashed and set aside. It is directed that the detenu-Narendrakumar P. Patel shall be set at liberty forthwith, if he is not required in any other case. Rule made absolute accordingly.

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